MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
April 18, 2005, at 9:00 a.m.
Scott Hart Building Auditorium
301 N. Roberts, Helena MT

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Secretary of State Brad Johnson, and State Auditor John Morrison

VIA TELEPHONE: Superintendent of Public Instruction Linda McCulloch

ABSENT: Mary Sexton, Director DNRC

Mr. Johnson moved for approval of the minutes from the March 21, 2005, meeting of the Board of Land Commissioners. Seconded by Mr. McGrath. Motion carried unanimously.

BUSINESS CONSIDERED:

305-3 CX FIELD – COAL CREEK CBM WELL DRILLING APPLICATIONS

Tom Schultz, DNRC Trust Land Management Division Administrator, said I am here for Director Sexton while she's out of town. This item was tentatively scheduled to come before the Board last month but there was litigation involved and we decided to postpone that discussion until this month when we had clarification from the court. We have 16 wells being proposed on state land within a field of 139 wells. There are 217 total wells. One hundred thirty-nine wells are located on federal land, 62 are on fee land, and 16 are on state land. This is in the existing CX Field as it is expanding.

Monte Mason, DNRC Minerals Management Bureau Chief, said we're here today seeking approval for 16 state wells that are proposed on a state section of land that is included in the Coal Creek Plan of Development (POD). It is the latest phase that Fidelity has proposed as part of the CX Field which is located near Decker and the Wyoming border. This particular POD has 139 federal wells, 62 fee or private wells, and 16 state wells for a total of 217. The 139 federal and 62 private wells are approved for drilling and some of the federal wells have been drilled. The POD was submitted to the various parties, BLM and the Board of Oil and Gas Conservation (BOGC), in February 2004. The BOGC released its Finding of No Significant Impact (FONSI) February 1, 2005, after conducting their joint MEPA/NEPA review with the BLM. The BLM issued its Finding of No Significant Impact on January 19, 2005. The BOGC has regulatory authority over the operations that are conducted on state land just as they do for operations on private land. We're here today for approval if the Board deems it appropriate from the trust ownership perspective pursuant to our oil and gas leases, to drill and complete these 16 wells. There is no other infrastructure proposed for this section other than the infrastructure needed to complete the wells and produce the water and the gas, power line, and some two-track trail. There is no water storage on the state land and there is no water discharge on the state land. As you know, water issues as far as the Tongue River, are under the regulatory authority of the Department of Environmental Quality (DEQ).
This is the third Plan of Development within the field.

Bobbi Jo Coughlin, DNRC's petroleum engineer, presented a power point show to outline how the CX Field was developed. She said basically it was developed in four phases. Three phases have been completed and two have been proposed. They started with 253 pilot wells drilled pre-EIS, the Badger Hills and the Dry Creek POD have both been completed. The Coal Creek POD is what we bring forth today. Pond Creek and Deer Creek POD have been proposed. The Badger Hills POD consisted of 178 total wells with 20 being state, 86 being federal, and 72 fee. This was approved by the Board on September 15, 2003.

Mr. Schultz said when we say approved by the Board, the Board was approving just the wells on the state land, not the rest of the POD.

Ms. Coughlin said the Dry Creek POD had 22 federal wells, 3 fee wells, and 11 state wells which equal 36 total wells. This was approved by the Board in February 2004. Most of the wells drilled in the pilot phase were drilled in the boundary of the Dry Creek POD, just west of where the Badger Hills POD was. The Coal Creek POD is the one we're here for today and of the 217 wells, 26 wells have been drilled already. Fifteen are on private land and 11 on federal land. On the Coal Creek state land 16 wells are proposed, one all weather road, one two-track trail; there is no compression station batteries, water discharge or water storage on state land. The Pond Creek POD was presented to the BOGC on March 17, 2005. There are 55 proposed federal wells, 23 proposed fee, and no proposed wells on state lands within the Pond Creek POD. This is currently pending environmental review and lies north of the Dry Creek development. The Deer Creek POD was also presented to the BOGC on March 17, 2005, and has 71 federal wells and 99 fee wells. There are no proposed state wells but there are 40 acres of state land within the area. There is no infrastructure proposed on those state lands.

Fidelity is drilling wells on 160-acre spacing, which means four pad sites per section. Three to five wells are drilled per pad to different coal seams in the Fort Union formation. Gas is transported to batteries which compress it before it is transferred to a sales line. It is generally compressed twice. We have one battery per 1800 acres of development and then it is sent to a central compressor where it is compressed before it is transferred to the sales line. Water lines, gas lines, and underground power lines are generally co-located to minimize the land disturbance whenever possible. Ms. Coughlin showed a slide that depicted a diagram of a coalbed methane well. She said generally as you reduce the water pressure, the methane breaks free from the coal and travels up the annulus of the well and the groundwater is pumped out and discharged. All the gas is metered and monitoring is done remotely.

The CX Field currently produces 1000 – 1100 gpm of water. We took all the production from the CX Field and divided it by the number of wells to give us an idea of what each well is doing. It is a general curve, mcf per day is around 20 and it will hold that for three years before it starts declining. Water production in gallons per minute is from 69 at the beginning and drops down after four years to 5 – 6 gallons per minute. The state earns 12.5% royalty on wells drilled on state land, total revenue generated for the school trust fund through January 2005 is $1.27 million. We are currently averaging about $100,000 per month for the trust from coalbed methane production. Estimated total royalty generated is $2 – 3 million per section over approximately 15 years, based on Fidelity's standard of a quarter bcf per well. The PEIS is a joint environmental document with BLM, Department of Environmental Quality (DEQ), and BOGC. Each issued separate Record of Decision's in January 2003, March 2003, and August 2003. We analyzed the cumulative impacts for 26,000 wells over 20 years and the rate of

development is significantly lower than anticipated. The surface disturbance is less because the EIS analyzed 80-acre spacing units and Fidelity is actually developing on 160-acre spacing units which theoretically cuts the number of wells in half. Total water production is significantly less because of the same reason. They initially assumed a rate of 15 gpm decreasing to approximately 2.5 gpm over 20 years. The average initial rate is actually 6 – 8 gpm with a decline of 30% per year. At the time the EIS was completed, we had 253 pilot wells already drilled. According to the EIS by the end of 2004, 2,860 wells would have been drilled in addition to the 253 previously drilled wells. The actual number was 426 total at the end of 2004. We are well below what was analyzed in the EIS.

Mr. Mason said the PEIS is the joint EIS covering a forecast of statewide production on all lands within the state. The BOGC had an existing PEIS, but a few years ago through discussions and a lawsuit they figured out they needed to update that PEIS to include coalbed methane production. So, a few years ago they had an update on the PEIS which was done by the BLM, BOGC, and DEQ. When that was finished you started seeing the PODs, the basis of development which we just discussed, the first three after the pilot timeframe and the two proposed in the future that don't involve state land. That was post-EIS. The Northern Plains Resource Council and the Northern Cheyenne Tribe challenged the sufficiency of the PEIS. There were finally rulings on that by the federal district court in Billings. The first ruling was on February 25, 2005, the most recent ruling on the injunction request was April 5, 2005. Here in summary fashion we're talking about what the issues were related to this challenge to the PEIS and what the outcome of that was.

Mr. Mason showed slides of the issues raised in the lawsuit with the court opinion rendered on each issue, saying an opinion was rendered on both February 25 and April 5, 2005.

- The first issue is the big one, the allegation that the BLM should have considered phased development as one of the alternatives that was carried through in the PEIS. The court concurred and remanded it back to the BLM. It was found inadequate without a phased development alternative for BLM to base it's Record of Decision (ROD).

- The next issue was that the BLM failed to consider reinjection into coal seams. The court disagreed with that and found that BLM's treatment of that issue was reasonable.

- The third issue was that the BLM failed to adopt the best available control technology for compressor emissions. The court disagreed with that particularly in light that it wasn't developed within the filings for the court to review by the Plaintiff. There were some NEPA procedural issues raised saying NEPA was violated by completing two separate EIS's for Wyoming and Montana. The court disagreed and reviewed the BLM's procedure for developing the two EIS's for the two states but collaborating on all the cumulative impacts, and the court found that to be a reasonable process.

- The next one is a tangent of that, that the EIS's are similar and therefore they required a single EIS. The court disagreed, similar to its earlier discussion.

- Another issue was the sufficiency of the analysis of impacts. The issue raised was that the BLM EIS failed to adequately analyze impacts to groundwater, surface water, air, aquatic, wildlife, methane, migration, noise and traffic. Because the court was able to remand on the phased development alternative it did not have to render a formal

opinion. However, because it was remanding it for additional work, the court rendered an advisory opinion on remand so that the BLM would know what it had to work on and what it didn't have to work on. The court issued an advisory opinion that the EIS adequately considered the impacts of CBM development. It did, however, note two areas of concern. One, it wanted to see additional discussion on private water well mitigation agreements. Two, it wanted to see the Tongue River Railroad included in the EIS's reasonably foreseeable development scenario.

- The next issue is a process issue that was raised that the BLM violated participation provisions of NEPA and the court did not have to rule on that because it is remanding it back to the BLM for the phased development alternative.

- BLM violated FLPMA, NHPA, and NEPA relative to its fiduciary obligations to the Northern Cheyenne Tribe. FLPMA was dismissed without prejudice; it wasn't ripe. On the other two the court ruled that those were in fact a rehash of previous arguments.

- The last issue, for injunctive relief, was the one most recently ruled on. The Plaintiff's asked for injunctive relief to prohibit future development while the EIS was remanded back to the BLM.

- The court had additional hearings and briefs and on April 5, 2005, issued a ruling that agreed with the BLM's proposed solution to that, which would be a ceiling of 500 wells per year. That is during the timeframe the PEIS is being supplemented.

That's where we come to the Board today, our particular section of 16 wells is part of a POD that has been approved by the regulatory agencies. The wells that are related to that have been approved, and some have been drilled already. The department seeks Board approval to continue with that.

Mr. McGrath asked if we were under the 500-well cap?

Mr. Mason replied we are.

Governor Schweitzer said the discharged water doesn't stay on the state lands in ponds, where does it go?

Mr. Mason said it is in underground pipelines that goes into the water management area. Lines come from various wells, collate to larger pipelines and goes to the areas where they take care of the water. The major part of it is the approved discharge into the Tongue River. They have an approved permit with the DEQ for up to 1600 gpm on a 30-day monthly average. About 1000 gpm goes there. They utilize some water for dust control at the mines and are also thinking about using some of the water for pilot treated irrigation in Wyoming. There are various places where they utilize the water and it is all handled under the regulatory authority on discharge into the Tongue River by the DEQ. With that, we don't have any discharge or holding within the state section.

Mr. Johnson said if all of these wells that are proposed for development are drilled, what would that do to the level of discharge? How close to that cap would that bring us?

Mr. Mason said if their only option was discharge into the Tongue River of untreated water pursuant to the current permit, that would bring them right up there to the 1600 gpm per minute 30-day cap.

Mr. Morrison said right now are we at about half of that?

Mr. Mason said currently the field is between 1000 – 1100 gpm out of 1600 gpm cap.

Mr. Morrison said I thought you said the new figure was about 800-900 gpm.

Mr. Mason said the new would be for 217 wells, 7 gpm. Obviously you're thinking of future development. The two that don't involve state land are the next phases of development. But they have two applications in, one is to review and renew the current permit for discharge and DEQ is working on that. They also have a submittal to DEQ for additional discharge permit for treated water. That is one of those that they are going to try, they are not guaranteeing it will work on a field wide basis, but they believe they have the technology to do that. And they have a permit request under review by the DEQ. Clearly, for future development they are going to have to come up with other means to deal with the volume of produced water. That falls under the authority of the DEQ for those particular means to do that.

Mr. Johnson said if, in fact, we develop all these proposed wells, under current permitting standards that is going to end future development until those are revised. Is that based on that discharge limit into the Tongue River? Is that correct?

Mr. Mason replied yes that puts them right up against the cap. Now, existing wells are declining in water production over time. With each phase you have a rise in water production and then they start decreasing. But that in and of itself would not be enough to handle the next two phases.

Mr. Johnson said the other thing that intrigues me is this prospect of water treatment. Is it anticipated that water that goes through that treatment process would then be suitable for irrigation?

Mr. Mason said suitable for discharge for irrigation? Yes.

Mr. Morrison said DEQ has established salinity standards of some kind, is that correct? And I understand we are at 1000 gpm now is that correct?

Mr. Mason said yes.

Mr. Morrison said how are we doing on compliance with that 1000 gpm with DEQ standards?

Mr. Mason said we are significantly below.

Mr. Morrison asked is there any significant variation in salinity expected from the discharged water from the 217 new wells or is that something that is unknown?

Mr. Mason said it is relatively common across the field. It is a matter of volume, i.e., the additional volume being discharged into the river.

Mr. Morrison said but the treatment process that it goes through before discharge assures compliance with the salinity standards?

Mr. Mason said the current discharge permit is for untreated water. That is why they have a cap. Because DEQ has looked at what the constituents within the produced water, the constituents level within the Tongue River, and they have put a cap on the current permit.

Mr. Morrison said I thought you were saying it went through settling ponds or something on the way out.

Mr. Mason said no, they are storage ponds. The water quality is the same, it is a volume handling method.

Mr. Morrison said so the salinity is not decreased between the time when it is pumped out and when it is discharged?

Mr. Mason said there is some within a settling pond but not significantly, no.

Mr. Morrison said the way that DEQ manages the salinity into the Tongue River is virtually by gpm rather than trying to do something with the water?

Mr. Mason said when the permit was first issued for 1600 gpm, they did not have numerical standards. They have numerical standards now and they are reviewing the request by Fidelity to renew that current permit and the conditions that will be placed on that against the numeric standards they now have to work with, that were adopted by the Board of Environmental Review. The other request by Fidelity is for a proposed treated water discharge, where that would be treated and then discharged. So they are reviewing both.

Governor Schweitzer said the question isn't the volume of discharge, it is how much sodium. The question isn't salinity, the question is how much sodium. So do we know and can we anticipate with the wells we are drilling, what the sodium absorption rate (SAR) will be in those wells? Do we already know that in advance?

Mr. Mason replied yes.

Governor Schweitzer said so we have done that calculation and that is how we arrived at the 1600 gpm of untreated water. The SARs are going to be 40 or 50 and we think the river complex can take 1600 gpm of SAR 30 or 50?

Mr. Mason said when you say "we" it would be the state. It is not DNRC, or state lands. It is DEQ which has the regulatory authority over all discharges, not just from the fee lands, the BLM, or our state section, but waters of the state. Its permit reviews that issue for all discharges and they set that standard, 1600 gpm maximum, based on the existing permit. And now they are looking at the characteristics, the pieces, that will go into any renewal of that permit. Now they have numeric standards on constituents in the water that they are looking at. Prior to that they did not have numeric standards.

Governor Schweitzer said it seems to me that the big picture is this: the solution to pollution is dilution. In particular, when you are looking at sodium. We have stoic low levels of water coming out of Wyoming so we have a fixed standard of 1600 gpm maximum with the SARs that we've calculated. If the Tongue River and Powder River would continue to decrease in flow, we could be in a position where we only have 5000 gpm flowing by and we're adding 1600 gpm and there is no consideration for the quantity of flow we have relative to the amount of sodium we are applying. Is that accurate?

Mr. Mason said there is in the new permit that DEQ is reviewing. They are looking at high water-low water, all types of issues as far as what is appropriate.

Mr. Johnson said tell me some more about how likely the treatment is to be successful and looking at the 1600 gpm discharge now, how much of that would be treated and what impact is that going to have in terms of raising that limit?

Mr. Mason said Bruce Williams, VP at Fidelity, would be the best person to answer that. I know that for water treatment, the technology is there, but big question is whether it works on a commercial scale. That is what Fidelity is looking at now, to put that in as an actual facility and see how it works on a commercial scale.

Mr. Johnson said it seems obvious that if that is successful on a commercial scale it would radically change the nature of this whole discussion.

Mr. Mason said its just another option for proper water management.

Governor Schweitzer said it is being used on a commercial scale in Wyoming. The folks that do that can do it on a field basis for about fifty cents per mcf. What is the value of gas today?

Mr. Mason said about $5 per mcf.

Governor Schweitzer said on a commercial scale removing the sodium.

Brenda Lindlief-Hall, Tongue River Water Users' Association, said we've heard talk about the amount of discharges, there has been some presentation about the cumulative effects of the full scale development. There is going to be a lot of water discharged. The Tongue River Water Users' Association is very concerned that Fidelity is directly discharging this water into the Tongue River when we believe there are alternatives such as treatment. There is some potential to reinject. To dump dirty polluted water into the river is an archaic way. The Water User's Association believes it is the worst possible way to dispose of this water. There are a number of solutions to this, and yes, dilution is one of the solutions to pollution. As it has been brought out this morning, we don't have that dilution factor. Right now as of this morning and I think for the last five days, the Tongue River has been at record low flows for this time of the year. About one third of the water that typically flows into the river is there now. The Tongue River reservoir storage is extremely low compared to past years. There are concerns that when highly saline water is being dumped into the reservoir it is going to be stored there and those salts are going to build up. These irrigators can't afford to have saline water dumped onto their fields. We think that there are alternatives. One of the things that was brought up this morning are the standards promulgated by the Board of Environmental Review in 2003. The standard during the irrigation season, March 1 to October 1 of each year, for SAR is 3.0 with no individual

sample to exceed a 4.5. Thus all the samples taken during the month are averaged together and that average cannot exceed a 3.0. So in a hypothetical situation water with a SAR of 4.0 could be dumped for two weeks straight and those irrigators would have to take that water and then they could cut back the flows.

Governor Schweitzer said let me make this clear. Those standards are standards of what is in the river, not what is discharged. The discharged water is more likely to be 30 – 50, in that range.

Ms. Lindlief-Hall said that's correct. There is a mixing zone that's two river widths it has to go down.

Governor Schweitzer said if we exceed 4.5 then there is the implementation that we would decrease the amount of discharge that goes in. Is that what happens? If we should exceed 4.5 as an SAR in the water that is entering the irrigation system, then no matter what the agreement has been in terms of 1600 gallons that has to be decreased. Is that what we're saying?

Ms. Lindlief-Hall said that is my assumption. I need to clarify this, but this is based on a monthly average of samples so if there are 15 samples taken per month it seems to me that that averaging there could be some pretty highly saline discharges for a number of days. They don't exceed the 4.5 which is the maximum for any individual sample, but still at the end of the month you end up with a 3.0. Those irrigators could potentially be taking some highly saline water and putting it on their fields. From what I know from talking to a number of soil scientists the sodium absorption ratio of the soils is going to rise eventually to that of the water that is being applied. The other factor and the other standard that was set by the Board of Environmental Review is electrical conductivity or specific conductance. These standards during the irrigation season is 1000 with no individual sample in the month to exceed 1500. At Miles City currently and for the last several weeks they've been seeing electrical conductivity of 1000 and over. Some of this information is off of the USGS world time website. For April its climbing, it has been well over 1000. We have some real concerns about direct discharges into the Tongue River. Additionally, I understand there are going to be two permits issued by the DEQ. The permit that Fidelity is presently operating on has been expired for several years, its been administratively extended. I haven't seen copies of the two draft permits coming out, one is for treated water and one is for direct discharges and I know that they will be flow-based permits. We are concerned because we aren't getting the flows and we don't see any relief in sight for dilution. When those standards were originally promulgated the DEQ came in and said with a leaching fraction of 15% we can be safe with a SAR of 3.0. I don't really know that much about how that works, but that is assuming that there is 15% of the water available to leach out the salts. That would come through rainfall, snow melt, and clean water applied to the fields to leach the salt out. We don't have that 15% leaching fraction, so I think some of the underlying assumptions behind these standards are flawed. We are not able to come up with that 15% leaching faction.

Governor Schweitzer said give me an idea of the make up of the Tongue River Water Users' Association.

Ms. Lindlief-Hall said they are all farmers and ranchers. People that are members of the Tongue River Water Users' Association purchase 40,000 acre-feet of water through water purchase contracts with the DNRC. Every year they pay approximately $9.00 per acre-foot for

the water. It's the most precious resource. They are farmers and ranchers, people who have lived there for years and its their livelihoods and they provide food and assets to Montana.

Governor Schweitzer said just clarifying for the folks that are here about leaching requirements and about electrical conductivity, the numbers that Ms. Lindlief-Hall has presented as 1.0, 1.1, and 1.2, frankly that doesn't give me any level of concern as a soil scientist. Electrical conductivity at 1.5, even 2.0, that is not going to be our concern in the Tongue River Basin. SAR is the long term problem, sodium. It isn't total salts, it's the sodium absorption ratio. That's our problem. Leaching requirements are getting to 15%. Anybody who flood irrigates I don't know how they aren't over 30% - 40% leaching requirements. It isn't that you need fresh water to do that leaching requirement, it is a calculation based on how many total salts that you have. It just means that you need to put on 15% extra of that same water to move those salts out of the root zone. With flood irrigation you're probably at 30% - 40%, only a center pivot could get you close to 15%. On the USGS data when I see current flow is that 2 cfs?

Ms. Lindlief-Hall said yes.

Governor Schweitzer said current flow is 90 cubic feet per second, 450 gallons per cubic feet per second, so it means to say we have 40,000 gallons flowing and we are allowed to put up to 1600 gallons in 40,000 gallons. The mean over the years has been 326 cfs, that's 135,000 gallons per minute of which we can put 1600 gallons in. If there is any concern that I have it is the dilution factor we're faced with.

Mr. Johnson said was the mean flow used to establish the 1600 cfs?

Governor Schweitzer said I suspect so I'd have to talk with the folks who made this decision as to whether this is modified based on historic low flows.

Ms. Lindlief-Hall said yes it is. In the current permit it talks about the 7Q10, that is the lowest flow in 10 years for a period of seven days. The 7Q10 has been at 39 cfs, however, it has been modified recently to 35 cfs. We're reached that 7Q10 a couple of times since Fidelity began discharging in 1998. We've reached some critical low flows.

Mr. Morrison asked when did DEQ establish the 1600 cfs and how often do they revisit that?

Ms. Lindlief-Hall said it was established when the permit first came out, June 2000.

Mr. Morrison said how often do they revisit that?

Mr. Mason said it is being reviewed right now.

Mr. Morrison said what happens if we approve these today and the DEQ says flows from Wyoming have decreased to the point where 1600 is too high and we're going to lower it. And now we're discharging something in excess of the requirements? We approve the application but it is up to Fidelity to abide by the regulatory requirements of DEQ even if they are far lower than the capacity of these approved wells.

Mr. Schultz said yes, they could not exceed those.

Mr. Johnson said it is my understanding that no matter what the standards are for discharge we cannot ultimately discharge at levels that will degrade the water quality in that river.

Governor Schweitzer said actually that's incorrect. Any additional sodium that we're applying to the river is already a degradation, it's a question of how much we're willing to accept. Any of this artificial application of sodium to the river is already a degradation.

Mr. Johnson said we cannot degrade the water quality beyond the established standard.

Ms. Lindlief-Hall said I'd like to clarify that point and come back to the flood irrigation/center pivot issue. Presently the coalbed methane discharges under the rule promulgated by the Board of Environmental Review are excluded from non-degradation review. Non-degradation review is a standard that is required under the Montana Water Quality Act, §75-5-303, MCA, and that is not being applied. It is also required under the Federal Clean Water Act. Non-degradation review has not occurred in Montana.

Mr. Morrison said the State Board of Land Commissioners is not the body that is going to make decisions about the appropriate SAR or the appropriate volume of discharge into the Tongue River. So when we are talking about discharge issues and salinity issues the only way the Land Board steps in and says this is unacceptable is if the discharge is on state land and it is unacceptable to us to have that amount of water and salt discharged onto our sections that we manage, that we're responsible for the stewardship of. But in terms of discharge somewhere else, that is the business of DEQ. Our business is to just drill the wells and determine what is best for the trust and those sections of land that are within the trust.

Ms. Lindlief-Hall said I suppose that's probably technically correct and I know the Land Board and the DNRC have a fiduciary duty to improve the trust and take care of the lands and manage the trust, but I would also submit that the DNRC has an equally compelling duty under the Montana Constitution to not implicitly authorize degradation of water and soils and private property by approving an action where the water is going to be directly discharged into the Tongue River. I would submit that you have an equally compelling duty to ensure no degradation and to maintain and improve the environment under the Montana Constitution. Perhaps this action could be authorized with the caveat that the water be treated before discharge. There are many irrigators on the Tongue River that still use flood irrigation but there have been lots of people who have turned to center pivot irrigation and they are concerned that they aren't going to have the water, and they purchase the water. Are they going to be able to purchase that much more water to provide that leaching faction? There are some concerns. I know that water is also being sent to the Decker Coal mines and perhaps the Spring Creek Coal mines for dust suppression. But water runs downhill and that water will end up back in the Tongue River. If we send it to Wyoming for irrigation through return flows water is going to end up back in the Tongue River and we'll have to deal with it at some point.

Bruce Williams, Vice President of Operations for Fidelity Exploration and Production, handed out a report relative to water quality in the Tongue River relative to their discharge. He said the discharge permit that was issued to Fidelity by the DEQ in June 2000 was predicated on a 7Q10 of 39 cfs. They used that low flow to calculate what volume of water we would be allowed to discharge into the Tongue River. That number was 39 cfs. The flow has been lower than 39 cfs in a few instances since that point in time, but that is the basis upon which the permit was issued. The limiting factor on the permit was not sodium absorption ratio or salinity, it was

nitrates. Actually if we used SAR or salinity as the limiting factor we would be able to discharge more than the 1600 gpm. We've never come close to the 1600 gpm, the highest we've ever come is 1400 gpm. In the month of February we discharged just under 1000 gpm into the Tongue River. That is an important point to make. The water from the wells that are proposed as part of the Coal Creek POD don't really require the water treatment permit to be able to develop this. Because of the decline in production of water from the exiting wells and our forecast of when the production from these new wells will come on as we go through a normal development process, we think we can handle all this water under our existing 1600 gpm discharge permit without the need for treatment. Treatment isn't a requirement at least in the Coal Creek POD. In the other PODs that Ms. Coughlin referenced that we have submitted to the BLM for later development in 2005 and 2006, we do require water treatment in order to be able to handle that water. That is why 14 months ago we applied to the DEQ for a water treatment permit. Governor, you were correct in your statement that there is full scale water treatment going on in Wyoming using the same process that we've applied for. But they are not treating water that has as high a SAR as we have and they are not treating to a standard as low as ours is. So the uncertainty Mr. Mason expressed that we have about how this will work on a full scale basis is really still there.

I'd like to comment briefly on the report I handed out. The analysis was done for us after the EC and SAR standards were adopted by the Board of Environmental Review for us to see how our discharges met those standards, and in fact we had. Ms. Lindlief-Hall referenced the salinity and the electrical conductivity at Miles City and it is important to point out that there is a lot that goes on in the river. Basically this water flows out of the Big Horn Mountains in Wyoming and goes through about 25 miles of pretty intensive irrigation in Wyoming before it flows into Montana. It flows into Montana and runs about five miles before it flows into the Tongue River Reservoir and there is irrigation downstream. On page 2 of the report is a map of the Tongue River Basin showing the location of various USGS gauging sites along the Tongue River. I will focus you on the site called Brandenberg because at this point in time that's the last site before a large volume of water is taken out of the river at the T&Y Irrigation District, near where Pumpkin Creek runs into the river. When we talk about water quality at Miles City a lot of it has to do with flow. There is a relationship between the salinity, the SAR, and the flow rate. On page 9 of the report, it shows a couple of days of flow and the electrical conductivity. When there is not a lot of irrigation water being taken out at the T&Y diversion the relationship between flow and conductivity fits and Miles City doesn't have a problem with electrical conductivity. But you can see at the points where Miles City has a problem with electrical conductivity is when most of the water has been taken out of the river upstream of Miles City and diverted into the T&Y ditch. At that point, you get very very low flows and in 15 miles below that irrigation diversion you get high electrical conductivity at Miles City. This electrical conductivity is not a function of coalbed natural gas development it is a function of how much water is being taken out of the river at the T&Y ditch.

Mr. Johnson said if we were discharging no water into the Tongue River we would still see an elevation in electrical conductivity past the point where the water is diverted into the irrigation system?

Mr. Williams said absolutely.

Mr. Johnson said does the report have historical data?

Mr. Williams said it does have historical data for Miles City on page 6. It has historical data before 1999, before coalbed natural gas development in Montana. You can see that electrical conductivity at Miles City a number of times exceeded 1000 when the flow was low. The SAR was highest when the flow was low. During the period of time since we've had coalbed natural gas development we're following that same trend. I don't want to discount the importance of this or the importance of high water quality to the irrigators, and I don't want to argue with the contention that Fidelity's operation ought not interfere with the irrigators and their ability to irrigate their land. In an effort to try and get data behind these issues, two years ago Fidelity initiated a program called the Tongue River Agronomic Monitoring and Protection Program. In that program we have been doing soil and crop sampling at 14 volunteer locations where landowners volunteered to let us on their land down the entire Tongue River Basin from the state line where the Tongue River flows into Montana down to where it flows into the Yellowstone River at Miles City. We have been gathering data on those sites, we gathered data in the fall and spring one year, but generally gather the data in the fall to see what is the effect of our operation on the soil chemistry and physical characteristics. We haven't seen an impact. We have been able to calculate leaching fraction as a result of the work we've done and we've seen leaching fractions that are upward of 40% - 50%. We have not seen leaching fractions that are below 15% in the data that we've been able to gather. The other thing that Fidelity had done is in November 2004 it installed a gauging station on the Tongue River just upstream from the T&Y irrigation diversion as part of a lawsuit settlement with Northern Plains. Fidelity installed that station and agreed to pay for its operations for five years. The USGS is running that gauging station and once they develop their curves for flow it will be part of their onsite on-line data gathering. The calculations that were done by DEQ in 2000 and the calculations being done by the DEQ today say that you can discharge some volume of water into the Tongue River by various flow rates and not exceed standards and cause degradation beyond acceptable limits. The historical data we've gathered as we've watched what has happened since we began our development has shown that we haven't exceeded standards and we haven't caused degradation beyond these limits. The Agronomic Monitoring and Protection Plan supports that as well. We're taking seriously the fact that we need to deal with the sodium. We anticipate that in the next couple of months we'll be issued a permit by the DEQ so we can get a treatment plan up and running and be able to treat this water. Then the question will be, what do we do with the treated water? Will we discharge the water into the Tongue River or will we try and provide it to local landowners because all of a sudden they have a new source of irrigation land water. We're looking at all those things and trying to figure out how can we continue to do our business. How does that relate to what you're being asked to do here today? Essentially we're looking for approval for 16 wells on state land. If all 16 wells came on at one time and produced at the maximum that we anticipate that the wells in this area will produce at about 6 gpm, it will generate 96 gpm of produced water. We've got the capability to handle that under our existing discharge permit and we just encourage the Board to approve the application.

Governor Schweitzer said just to put it in layman's terms, 96 gpm is three garden hoses full.

Mr. Williams said probably more like 15 garden hoses full. A garden hose is approximately 5 gpm.

Governor Schweitzer said I understand what we're talking about today is just what affects state lands and what our revenue will be and our fiduciary responsibility to just that section that we're dealing with. But for those who are attorneys among us know that some of what you're asked to do by clients is to prepare a great deal of information, all factual, and then help people in making

their decision to go in a direction that you'd like to lead them. The report Mr. Williams handed out is all good data and those who look at this and say why is it after we take the water out into this irrigation project is it that those salinity levels go way up below that diversion point? The report on page 10 states, "That during these times the water in the Tongue River is derived mostly from localized groundwater inflows and irrigation flow. So activities such derived mostly from localized groundwater…. activities such as coalbed methane discharges on the upper river have little or no affect on the water quality in Miles City." Let me explain why that is an inaccurate statement. The first half is correct – leaching requirement. What is happening during the entire year when SARs are low when we have spring water coming with big flows of river water, we are diverting the water. We're placing it on the soil. The plant evaporates the pure water back into the atmosphere, the sodium, the other salts, are in that soil profile. With time, we get a 40% leaching requirement. Forty percent more water is running through that flood irrigation than the plants can absorb, it pushes that water right back into the river. That is where those instream flows comes from. What we're doing is banking the sodium and salts in the soil and then with time our water, the leaching requirement, is pushing it right back into the river. So as we add additional sodium to the river even when we are not irrigating or any other time, it eventually will make it to that soil and then back into the river and that is why Miles City is getting those bumps. Can we blame it on the irrigators? Sure, if 100 years ago we wouldn't have selected to have irrigation there would have not been any banking of those salts in the land but I think in Montana we decided we were going to be in the agricultural business. My point is simply that we need to be cognizant of sodium all the way down the ecosystem. And as we apply it to irrigated land it will be banked as a salt and then moved back into the river. However, the topic of discussion here is really not a question of salinity or SARs or electrical conductivity, we talked a great deal about that, I think what we're talking about are these 16 wells and the revenue we generate. Clearly they appear to be within the scope of what we can legally do based on the requirements we've given. If we want to address how Montana handles sodium and electrical conductivity, that is done at the DEQ. This is probably not the place to do it.

Mr. McGrath said I understand we are talking about 160-acre spacing units. Is that what you plan to do?

Mr. Williams said that's correct. We started our development in this area developing with two wells on each 160-acre spacing unit. In fact, the first development was more dense, we had three or four wells on each 160-acre spacing unit. As we've developed and increased the depression of pressure in the groundwater, we've come to the conclusion that we can probably get the same amount of gas out of the ground with one well on 160 acres as we could with two wells on 160 acres.

Governor Schweitzer said what you're actually doing is putting three or four holes from one pad. On 160 acres you will have a single pad and you're directionally drilling?

Mr. Williams said no. We've got a single pad and we're vertically drilling to each of the coal zones. We may have multiple wells on a pad but they are going vertically to different depths and different coal zones.

Governor Schweitzer said so we're extracting from not just a single zone, but two or three zones as we go down?

Mr. Williams said that's correct. One coal zone per well is what we have been doing. One well is completed in the shallowest coal zone, one well is completed in the middle coal zone, and one well is completed in the deepest coal zone.

Governor Schweitzer said and you do those all at the same time? Three different zones?

Mr. Williams said yes. We do those all at the same time, we put their flow lines in the same ditch. It minimizes the surface impacts significantly.

Governor Schweitzer asked how does it add to the cost? We're talking about environmental quality, if you have a single pad and you're drilling to zone one, the shallowest, and zone two, deeper, and zone three. When we talk about reinjection if we were to drill to the deepest zone first and extract all the water from it and deplete it over the course of ten years and then start extracting from the second zone and after we get the gas, pump that water right back into the third zone and then work our way to the surface until at the very end. The top one, which is aquifer that most of the ranchers are using, would have a full complement of water. If we are setting a single pad up to drill to all three zones, why not just extract the water and dump it or treat it whatever you want to do from the one zone and then ship the water back and forth between the two zones so that two thirds of the water is left in place?

Mr. Williams said its an issue of economics. In the instance you're talking about we basically would be recovering our investment in a 30-year period versus recovering it in an 8-10 year period the way we're doing it now. That's the biggest issue, economics. Relative to injection of water back into the coal seams, in some instances where that has been tried in Wyoming they had not been able to get as much water back into the coal, or rates as high coming into the coal as it came out of the coal. I have observed that in sandstone, dolomites, and carbonate rocks as an engineer so you wouldn't be able to inject all that water back into the zone. It really becomes a matter of economics and trying to get your return of investment back as quickly as you can.

Michelle Reinhart, Northern Plains Resource Council, said she wanted to talk about the phase development part of this debate. On February 25, 2005, Magistrate Richard Anderson issued an order invaliding the 2003 FEIS which was jointly done by the State of Montana and the BLM for failing to consider a reasonable range of alternatives for methane development. On April 5, 2005, Magistrate Anderson established a yearly maximum of 500 methane wells for federal and private minerals and established a 450-square mile area in which BLM can continue to permit methane wells. That is double the amount that they are currently permitting now. Today this Board will decide to grant approval of these 16 well project within the existing CX Field east of the Tongue River Reservoir. Northern Plains wanted the Board to consider holding off the approval of these wells because the environmental assessment for the Coal Creek project is intertwined with the 2003 EIS in which a part of it was invalidated by Magistrate Anderson. Part of it was invalidated because the agencies failed to consider a reasonable range of alternatives to methane development. Specifically, they failed to consider a phased development alternative. That is what we wanted the Board to discuss and look at today. Northern Plains, along with the US EPA, the Montana Department of Fish, Wildlife & Parks, and the US FWS, in our draft comments on the EIS had urged the BLM to consider phased development during preparation of that EIS. Arguing that a "go slow" approach would allow companies to coordinate projects and return wastewater to the aquifers of origin. That could also prevent the loss of valuable springs and wells which was another aspect the court said needed to be addressed in

the supplemental EIS the BLM is preparing. We wanted to have the opportunity to publicly weigh in and comment on this supplemental EIS and with the ways that phased development can occur. With approving the 217 wells including the federal, state, and fee in this Coal Creek project before the EIS is finished then we don't have the opportunity to weigh in on how the phased development happened. That's why we wanted to see the development happen after the phased development analysis was looked at. Unfortunately, Magistrate Anderson did not agree with us in that matter and this project is moving forward without having that complete phased development analysis done. The following are some of the benefits we see as possible under a phased development that could be incorporated into these projects and that the State of Montana could consider in its 16 wells: requiring methane development to occur in a planned and orderly fashion instead of the current situation where it seems to be wherever, whenever, however the leases are being developed; secondly, requiring methane development to occur first in geographic areas where adequate baseline data and other resource values affected by methane development exist; and third, that development combined with requiring reinjection of wastewater be looked at, and the depletement of wastewater in those seams, in the first stages of development. During the initial phases of development companies could be required to reinject or shallow inject wastewater into shallow coal seams if possible, or at a minimum, treat 100% of the wastewater prior to discharge. This combined phased development reinjection alternative would be a responsible approach to allowing methane development to occur while protecting the family farm and ranching economy, communities, aquifers, wells, and springs. The supplemental EIS needs to evaluate the phased development alternative, present the alternatives in a comparative form, and sharply define the issues and choices among the different options for these projects. Its for those reasons that Northern Plains is asking the Land Board to hold off on approval of these 16 wells under the Coal Creek POD until the proper EIS has been prepared, which includes the phased in development alternative that is protecting Montana's agricultural heritage and water resources. Although water is something that the DEQ handles, it is a key component of these projects and the PODs, and is something that the Land Board can look at and how projects are approved and planned for.

Motion was made by Mr. Johnson to approve the CX Field-Coal Creek CBM well drilling application from Fidelity. Seconded by Mr. Morrison. Motion carried unanimously.

Mr. McGrath said in terms of the Board's role, we're in a situation where we have a fiduciary duty to the trust. We have a permitted application. The process has been permitted by the entity that has authority to issue the permits, and we've had a court rule on that. In effect, the court has said that the phased development alternative that they've asked the supplemental EIS to be prepared for will not be affected by development of up to 500 wells in the area. Where we are is we have a request for the development of 16 state wells that have been planned, that have been projected. This would be the last of the state wells that will be developed in the CX Field. So clearly under the rules of the court and under our fiduciary responsibilities we are in a situation where we probably need to approve this so I am going to vote for it.

Mr. Johnson said there are a lot of hypotheticals that surround this entire issue and it is important that we look at those but it is equally important that we look at the science we have in hand and in my view we are not taking any unreasonable risks if we authorize the development of these 16 wells. So I would also urge that we approve them.

405-1 DPHHS: SALE OF DONATED PROPERTY IN MILES CITY (§77-2-231, MCA)

Mr. Schultz said this is for preliminary approval for the sale of property managed by the Department of Public Health and Human Services in Miles City. As we talked about before, there is a statute §77-2-231, MCA, called a 321 sale or transfer, where the department has administrative responsibilities to help support other agencies that manage state lands other than trust lands. This is an instance where a citizen of Montana had a significant amount of medical bills, the property he lived in was deeded to Health and Human Services in part to offset some of his medical costs. DPHHS acquired the property in January 2001. The individual whose property it was passed away in April 2001, and today DPHHS is seeking approval to sell this property. We're looking at a little over one acre. It is split into about 15 lots.

Governor Schweitzer asked what is the value of the property?

Mr. Schultz replied it has been valued at $17,500 as a minimum bid price.

Motion was made by Mr. Morrison to grant preliminary approve for the sale of property by DPHHS. Seconded by Mr. McGrath. Motion carried unanimously.

405-2 DISCLAIMER OF INTEREST – NOLLMEYER FARMS
405-3 DISCLAIMER OF INTEREST – KEITH & DONNA NELSON

Mr. Schultz recommended the Board address 405-2 and 405-3 as one item. He said both of these are issues where an individual has come to the department seeking to perfect their title in properties through quiet title action. We've had staff review them both. Both are in Richland County and are islands that are pre-statehood and the state has no claim to them. So basically the Board would be authorizing the department to submit a disclaimer notice to the court saying the state has no interest in these properties as these folks go through the process to perfect these lands.

Governor Schweitzer asked these are islands in the Yellowstone River? Define pre-statehood islands.

Mr. Schultz said yes in the Yellowstone River and are islands that were formed prior to 1889 when we became a state. If it were post-1889 the state may have a claim to those islands.

Motion was made by Mr. Morrison to approve the disclaimers of interest in items 405-2 and 405-3. seconded by Mr. Johnson. Motion carried unanimously.

Mr. Schultz said before you today are the first land banking proposals we have. The state got together with interested parties about a year before the last legislative session to bring together groups that could be affected by it. We had a very collaborative process coming up with proposed legislation. Every member of the former Land Board was supportive of the legislation. The legislation passed last session and has a sunset date of 2008. We worked diligently for the first year on the program to develop rules and went through negotiated rulemaking where we invited all the interested parties together. The Land Board adopted those rules about six months ago, and these are the first projects we're bringing forward. Again, the program allows

us to sell up to 100,000 acres, and we cannot sell more than 20,000 acres before acquiring properties. The two purposes of land banking are: (1) to diversify the land trust to increase revenue; and (2) to increase public access to state trust lands. You can't look at any one of those without the other. If we were to just talk about making money and ignore the public access part, we would not be doing our duty as a part of this. The overall picture is we need to sell properties high in value, in addition to the low end value properties that are isolated. Seventy-five percent of these properties have to be isolated, no more than 25% can be accessible. Of the two projects today, one is an isolated tract and one is an accessible tract. Both properties have the potential to generate in excess of $1000 per acre on the market. Much of the land in eastern Montana that you'll be seeing come in the next couple of months will probably be valued in the $150 - $250 per acre for isolated grazing land. We are going to buy properties that have public access and at a minimum spend $1500 per acre. We need to sell some of that high value land, the smaller parcels, to mix in with the enormous amount of isolated grazing land we're going to sell. The two parcels today are high value parcels.

405-4 LAND BANKING: PRELIMINARY APPROVAL TO SELL
(Section 36 T6S R2W (479 acres))

Candace Durran, DNRC Real Estate Section Supervisor, said it has taken us two years to get to this point. The parcel is about five miles south of Ennis is Section 36, it is just shy of 480 acres that are being proposed for sale. The land has been nominated by the lessee and it is surrounded on three sides by the lessee's land which has a conservation easement on it. To the south, east, and west is the ranch who nominated the parcel, to the north and on the corner are subdivisions. We put this out for scoping and we received a few comments from the residents of the private subdivision. There is no public access to this parcel. We are coming here today with the first of three trips we will bring before the Board. Today we are requesting approval to allow us to continue evaluating this parcel for sale.

Governor Schweitzer said I am looking at the map and I see a road that runs right through the middle of it but that is a road that has been closed?

Ms. Durran said that is not a public road.

Governor Schweitzer asked is it a forest service road that has access to something on beyond?

Ms. Durran said no. The public has no access on that road.

Mr. Johnson said there is no reasonable opportunity to create access from that north through what appears to be a subdivision?

Ms. Durran said it is a private subdivision. The potential would be there to create access to it. The ranch has conservation easements on it and they are the ones who nominated the parcel. My feeling is that they have the intention of purchasing it.

Governor Schweitzer asked who owns the subdivision to the north? Is that a third party? What I would not be happy to hear today is that the parties who have an interest in buying this land are also parties to the development and they are effectively able to leverage on their claim that we have inability to access it and yet potentially we do.

Garry Williams, DNRC Central Land Office Manager, said the majority of the lots on that property have been sold to individuals. The original landowner retains an interest in the easement to those properties and some of the undeveloped lots.

Mr. Morrison said as we move forward on these first transactions to sell, do we have something in mind to buy?

Mr. Schultz said right now we are looking, we don't have a particular property in mind. We do know its going to take up to 18 months to sell a piece of property. So what is out there today that we may be interested in, in 6-12 months may not be available. We are predominantly looking to pick up some agricultural property with some grazing acres on it. And we talked about the Blackfoot, there is interest in the Blackfoot that some folks have put conservation easements on their property and there might be some interest from the state in acquiring additional ground there with an easement on top. But as of now, we have nothing concrete in mind. We do know that the program sunsets in 2008 and it will take 18 months to sell a piece of property and we have to get the process going. Anybody, the public or anyone else, can nominate tracts for purchase but as of right now we don't have any one property in mind.

Mr. Morrison said we have a 20,000-acre cap on the land bank account at any one time and these are less than 1000 total for these two transactions. Do you have more transactions that are in the pipeline coming our way?

Mr. Schultz said in the next one to two months we would expect probably another 15,000 – 20,000 acres for preliminary approval to come to the Board. Realizing that not all of those acres will make it through the process. Lessees may pull out of the process. But we do anticipate in the next couple of months many more properties coming forward. They will predominantly be isolated grazing tracts in eastern Montana.

Mr. Morrison said given the amount of time it takes to complete the transaction, it is the department's thought that we will fill up this 20,000-acre account quickly and then it is going to take a year and a half to complete those transactions and have the necessary funds available to start purchasing land and reducing the amount in the account?

Mr. Schultz said yes. What we would likely do is as we move through this process, the 18 months, if we see something out there that is a gem that folks want to get into, we can always put an option on a piece of property. We just need to have enough money to put the option down to hold it until we can complete the process. Basically we'd have from now until we sell these to be looking at what to buy.

Governor Schweitzer asked is the reason this is worth $1000 per acre because there is no other easement in there?

Mr. Schultz said yes. If we had access to that parcel we would anticipate more per acre.

Ms. Durran said talking to the realtors in Ennis last fall acreage is going in the $2000 per acre range.

Mr. Schultz said so it would double if we had access.

Mr. Morrison said this is going to end up getting subdivided isn't it?

Mr. Schultz said the ranch that has nominated it has a conservation easement on their property. I don't know what their intentions are, they may add it to their ranch, put an easement on it, or subdivide it.

Ms. Durran said they have indicated they are interested in putting a conservation easement on it. But they want to put the conservation easement on it, they don't want us to do it.

Mr. McGrath said this is for preliminary approval, we will know who we are going to sell it to. We will know their intentions.

Mr. Schultz said this will come back before the Board two more times.

Mr. Morrison said this is for preliminary approval to put it up for sale.

Ms. Durran said yes. Actually it is preliminary approval to get an appraisal so we can come back and have the Board set the minimum bid price, and then we can put it on the market.

Motion was made by Mr. Morrison to grant preliminary approval to the land banking request to sell. Seconded by Mr. Johnson. Motion carried unanimously.

405-5 LAND BANKING: PRELIMINARY APPROVAL TO SELL
(Section 12 T9N R3W (160 acres))

Ms. Durran said this parcel is located in Jefferson County, just three miles SE of Helena. It is surrounded on three sides by Ash Grove Cement Plant land that they have as a buffer zone, the northern boundary is private landowners. The zoning map shows the parcel lies in Section 12, it has the cement plant to the south and is in an area and is zoned by Jefferson County as basic resource which means it can't be divided smaller than 160 acres and only have one principal residence. In the scoping process we essentially only heard from Ash Grove who didn't want to sell it because it is in the middle of their buffer zone. The adjacent neighbor called DNRC and is interested in buying it. That is the extent of the public input we've received.

Mr. Morrison asked what is the proximity of this piece to the 1600-acre subdivision that is being proposed out there in that area around the cement plant? Isn't that all part of that large subdivision?

Ms. Durran said the zoning on that is basic resource and then you get into the area that is low density housing. A lot of that is already developed. I am not sure where that subdivision is in relation to the parcel. Is that in Lewis and Clark County? This is less than a mile from the county line.

Mr. Morrison said so its further north.

Mr. Johnson asked is that tract currently generating any revenue?

Mr. Schultz said it is leased out for grazing and the income is $257 per year.

Motion was made by Mr. McGrath to grant preliminary approval to the land banking request to sell. Seconded by Ms. McCulloch. Motion carried unanimously.

Governor Schweitzer said so the other Board members know, I have a bias against selling land. I want to make sure we are able to bank this properly and that it is not "Enron" accounting. I know this is going to be very difficult since we are selling before we buy and I want to make sure we're trying to buy the same quality and priced land as we are selling. This is going to be very difficult accounting and it is going to go on for a long period of time. So, you'll hear me say that I am not a supporter of selling state lands so make sure this banking is bringing in more than we are sending out.

Mr. Morrison said we are hoping to buy better quality for a lower price.

Mr. Johnson said Governor you and I talked about this and we agree that we don't want to start depleting the land base in the trust. That's certainly something we all would agree on, but also I think as public demand to access to state land increases and continues to increase, this is going to be an important tool for us if, in fact, we use it wisely.

Mr. Schultz said when you talk about accounting, for your information, we have a database we've created and Candace has worked very diligently so that we not only account tract by tract but trust by trust. Each trust, there are 10 different trusts that we have to have separate accounting for, so when we do buy something we need to make sure that if we disposed of something that was for common schools that we buy something so they get their proportionate share of the lands were disposed of. So it will be an extensive transparent account and we do not intend to sell anything outside of land banking.

405-6 RIGHTS-OF-WAY APPLICATIONS

Mr. Schultz said we have ten rights-of-way applications for approval this month. The first six are under the historical rights-of-way application, the last four are for rights-of-way applications for a variety of reasons. The last one this month is one that was deferred from approval in last month's packet. It relates to the coalbed methane development for Powder River Energy Corporation and is in conjunction with the action taken earlier today. The applications are #13096 from Tim and Carla Milburn for a private access road to a single family residence; #13427 from Betty Lou Sweeting for a private access road for the purpose of conducting normal farming and ranching operations; #13435 is from Darlene Fulton for a private access road to a single family residence; #13504 is from Thomas and Kathleen Wankel for a private access road for the purpose of conducting normal farming and ranching operations; #13505 is from NorthWestern Corporation for an overhead electric transmission line; #13506 is from Hugh and Rita Sands for a private access road for the purpose of conducting normal farming and ranching operations; #11532 is from NorthWestern Energy for a barrel tank and associated 4" pipelines; #13507 is from Madison County for airport expansion of the Twin Bridges Airport; #13508 is from the City of Bozeman for a public access road; and #13402 is from Powder River Energy Corporation for an overhead electric distribution line. Mr. Schultz requested approval of the applications.

Mr. Johnson said I've got a questions with regard to the proposed r/w in Bozeman. How did we determine relative value between cash payment for that right-of-way versus the value of the electrical hook ups?

Mr. Schultz said we valued the property the same in every case. It is bare land value. So you basically say what is the worth per acre and you multiply that times the acres.

Mr. Johnson said what I am asking about is we have two choices here: exchange for services or cash in the bank. I want to be certain that if we're talking about relatively equal values between the exchange for services or the cash in the bank I would think we'd want cash in the bank but maybe I am missing something.

Mr. Schultz said we had new legislation passed last session that allows us on rights-of-ways to take that money and put it into the permanent fund or we can invest it back in the infrastructure. We have several parcels we acquired from DOT and some historic ones right in Bozeman where we have an office building. The intent of this one is for the Mandeville property which has highway frontage along Baxter Lane and if we can bring infrastructure to that property it can increase the value of that property significantly. We don't have a big pot of money to put into infrastructure so when we've done commercial leasing before we've actually put that onus on the developer to bring that infrastructure in and we've actually deferred lease payments. In this instance, we have the opportunity to bring some revenue in to put back into the property and improve the property to significantly increase the cash potential from that property.

Motion was made by Mr. Morrison to approve the rights-of-way application package. Seconded by Mr. McGrath. Motion carried unanimously.

405-7 LAND EXCHANGE: DNRC / JOHN R. MILLER

Mr. Schultz said again, this a request for preliminary approval of a land exchange. We've had some discussions about land exchanges in the past and this is one looking at lands in the Bitterroot in the Sula area south of Darby that the state is looking to dispose of in exchange for lands in the Blackfoot Valley. The properties we are to acquire are near Ovando on the Blackfoot River. We've gone through an initial scoping process looking at values, looking at acres, looking at opportunities for appreciation. The land in the Sula area has been appraised from a range of $1500 per acre up to $3500 per acre, the lands in the Blackfoot have been appraised at $1400 per acre. We've got these parcels that Mr. Miller is looking to acquire for his ranch and in addition to trading off his parcels we will get access on three easement areas to additional state lands that we currently don't have management access to.

Hank Goetz, Blackfoot Challenge, said his organization is a landowner-based watershed group in the Blackfoot Valley. We have been working with the Nature Conservancy for the last couple of years on a proposal. We're purchasing timber land from Plum Creek and then disposing of that land according to a community-based plan. As part of this process we've held community meetings throughout the valley over the last couple of years and at least two of those have been held in Lincoln. We've had unanimous public support for this. As the Lands Director for the Challenge my name and telephone number have been bandied about on our website and I have rceived no adverse comments to this proposal. We support this.

Bob Bushnell, resident of Lincoln, said our community supports this land exchange. It is very important to us primarily for recreation, hunting, snowmobiles, and also for the economy to our community because there has been logging going on in this area and that is important to us.

Mr. Schultz said remember this is for preliminary approval. We will still be continuing the MEPA process and holding hearings in every county that is affected. We anticipate bringing this back for final approval within three or four months.

Motion was made by Mr. Johnson to approve the land exchange. Seconded by Mr. Morrison. Motion carried unanimously.

PUBLIC COMMENTS:

Mr. Morrison said unfortunately, in my view, SB 337 and SB 97 did not pass through the legislature. These bills were designed to make it easier for us to follow through with our commitments with respect to the Whitefish Planning group's approach to the management of lands around Whitefish. They also would have provided tools that gave this Board more latitude in the management of lands in the urban/rural interface. Right now they are gaining value for development purposes and so it seems to me that it leaves us in a position of needing to do some research into whether we have the tools to effectuate the commitments we made to the folks in Whitefish and in dealing with similar kinds of issues in other parts of the state. I would like to ask the department if it could prepare something for us for the next meeting whether it deals with new legislation or existing law that describes possible alternatives to accomplishing some of the aspects of the Whitefish Plan and other similar kinds of issues we're going to face statewide.

Mr. Schultz said we will do that for the next month. We will bring an information item forward that outlines existing authorities as well as preferred authorities in the future.

Mr. McGrath said in that regard we postponed the programmatic EIS until May and consistent with what Auditor Morrison said I've got serious concerns about that now with the failure of these bills. So I am certainly taking a hard look at whether I want to support the PEIS the way its drafted.

Mr. Schultz said again, the PEIS for the most part is a planning document and these tools would be beneficial so hopefully the discussion next month can help us. Would you prefer postponing that until June so we can have this discussion first and see how it dovetails and maybe another PEIS?

Governor Schweitzer said I would prefer that. I think we actually postponed that until May until we could be sure these pieces of legislation passed and I think they are dead.

Motion was made by Mr. McGrath to adjourn. Seconded by Mr. Johnson.